



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

5636 Southern Boulevard, Virginia Beach, Virginia 23462

(757) 518-2000 Fax (757) 518-2103

www.deq.virginia.gov

Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

Maria R. Nold
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION ORDER BY CONSENT

ISSUED TO

Scrap 58, Inc.

VPDES Permit No. VAR05

Storm Water Registration No. VAR052016

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §62.1-44.15 between the State Water Control Board and Scrap 58, Inc. for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "CSCE" means comprehensive site compliance evaluation.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

6. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10.
7. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
 - a. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - b. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
8. "DMR" means Discharge Monitoring Report.
9. "Facility" means Scrap 58's used auto parts and scrap metal recycling facility located at 5324 W. Military Highway in Chesapeake, Virginia, from which discharges of stormwater associated with industrial activity occur.
10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
11. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
12. "Permit" means VPDES General Permit No. VAR05, which was issued under the State Water Control Law and the Regulation on July 1, 2014 and which expires on June 30, 2019. Scrap 58 applied for registration under the Permit and was issued Registration No. VAR052016 on December 16, 2014.
13. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.
14. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to

cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.

15. "Registration statement" means a registration statement for coverage under a storm water general permit.
16. "Regulation" means the General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges of Storm Water Associated with Industrial Activity, 9 VAC 25-151-10, *et seq.*
17. "Scrap 58" means Scrap 58, Inc., a corporation authorized to do business in Virginia and its affiliates, partners and subsidiaries. Scrap 58, Inc. is a "person" within the meaning of Va. Code §62.1-44.3.
18. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
19. "State Waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
20. "SWP3" means Stormwater Pollution Prevention Plan.
21. "Total Daily Maximum Load" or "TMDL" means The sum of the individual wasteload allocations (WLAs) for point sources, load allocations (LAs) for nonpoint sources and natural background, plus a margin of safety (MOS). TMDLs can be expressed in terms of mass per time, toxicity, or other appropriate measures that relate to a state's water quality standard.
22. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
23. "Va. Code" means the Code of Virginia (1950), as amended.
24. "VAC" means Virginia Administrative Code.
25. "VPDES" means Virginia Pollutant Discharge Elimination System.

SECTION C: Findings of Fact and Conclusions of Law

1. Scrap 58 owns and operates the Facility located at 5324 W. Military Highway in Chesapeake, Virginia, which discharges stormwater associated with industrial activity.
2. The Permit allows Scrap 58 to discharge stormwater associated with industrial activity from the Facility to Goose Creek, a tributary of the Western Branch of the Elizabeth River, in strict compliance with the terms and conditions of the Permit.

3. Goose Creek is located in the James River Basin. Goose Creek is listed in DEQ's 305(b) report as impaired for aquatic life use based on dissolved oxygen concentrations that are below the minimum criteria and for fish consumption due to Polychlorinated Biphenyls in fish tissue. Industrial point source discharges are listed among the potential sources of the impairments.
4. During a DEQ Facility inspection on July 29, 2015, DEQ staff documented the following compliance deficiencies with respect to the requirements of the Permit:
 - a. A SWP3 was requested but was not on site or available for review.
 - b. Records of quarterly routine site inspections for the 3rd and 4th quarter of 2013, all of 2014 and the 1st and 2nd quarter of 2015 were not provided upon request.
 - c. Records of employee training for 2013 and 2014 were not provided upon request.
 - d. Multiple stains from oil/petroleum spills had not been cleaned up.
 - e. Records of CSCEs for 2013 and 2014 were not provided upon request.
 - f. Records of quarterly visual monitoring of stormwater for the 3rd and 4th quarter of 2013, all of 2014 and the 1st and 2nd quarter of 2015 were not provided upon request.
 - g. Records of benchmark and Chesapeake Bay TMDL monitoring of storm water discharges for the 2nd semi-annual period of 2014 and 1st semi-annual period of 2015 were not provided upon request.
 - h. DMRs were not completed and submitted to the Department for the 2nd semi-annual period of 2014 and the 1st semi-annual period of 2015.
5. Part III.F.2 of the Permit requires a copy of the SWP3 to be retained at the Facility and provided upon request.
6. Part III.B.5 of the Permit requires that the Facility be inspected at least quarterly for compliance with the Facility SWP3 and the inspection results documented in the SWP3.
7. Part III.B.4.b(6) of the Permit requires that Facility employees be trained in storm water pollution prevention and that the SWP3 contain a record of training performed.
8. Part I.B.2 of the Permit requires discharges of hazardous substances or oil to be prevented or minimized in accordance with the SWP3 and prohibits the discharge of hazardous substances or oil resulting from on-site spills.
9. Part III.E.3 of the Permit requires that a CSCE be conducted at least annually and a written report of the inspection be kept with the SWP3.
10. Part I.A.1.a.3 of the Permit requires quarterly visual examinations of stormwater to be conducted and documented.

11. Part II.B.2 of the Permit requires monitoring results of quarterly visual examinations of stormwater to be maintained with the Facility SWP3.
12. Part II.C.2 of the Permit requires monitoring results to be reported to DEQ on a DMR.
13. On August 27, 2015, TRO issued NOV No. W2015-08-T-0002 for the violations noted in paragraphs C(4) through C(12), above.
14. On November 6, 2015, DEQ staff met with Scrap 58 representatives to discuss the NOV.
15. Scrap 58 responded to the NOV on November 12, 2015 and submitted a revised SWP3 on December 3, 2015.
16. On January 21, 2016, DEQ staff conducted an inspection of the Facility and observed that the oil/petroleum stains listed in C.4.d of the Order had been cleaned up.
17. Va. Code § 62.1-44.5 states that: "[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances
18. The Regulation, at 9 VAC 25-151-70, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
19. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.
20. The Department has issued coverage under no permits or certificates to Scrap 58 other than under VPDES Permit No. VAR05.
21. Goose Creek is a surface water located wholly within the Commonwealth and is a "state water" under the State Water Control Law.
22. Based on the results of the July 29, 2015 inspection, the November 6 meeting and documentation submitted by Scrap 58 on November 12, 2015 and December 3, 2015, the Board concludes that Scrap 58 has violated Part III.F.2, Part III.B.5, Part III.B.4.b(6), Part I.B.2, Part III.E.3, Part I.A.1.a.3, Part II.B.2 and Part II.C.2, of the Permit and 9 VAC 25-151-70 of the Regulations and §62.1-44.5 of the State Water Control Law, as described in paragraphs C(4) through C(12), above.
23. In order for Scrap 58 to complete his return to compliance, DEQ staff and Scrap 58 have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Scrap 58, and Scrap 58 agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$8,852.500 within 30 days of the effective date of this Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and shall be delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Scrap 58 shall include its Federal Employer Identification Number (FEIN) with the civil charge payment **and** shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Scrap 58 shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Scrap 58, for good cause shown by Scrap 58, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility; or (3) taking subsequent action to enforce the Order.
3. For the purposes of this Order and subsequent actions with respect to this Order only, Scrap 58 admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Scrap 58 consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Scrap 58 declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be

construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.

6. Failure by Scrap 58 to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Scrap 58 shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstance beyond its control and not due to a lack of good faith or diligence on its part. Scrap 58 shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Scrap 58 shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which Scrap 58 intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Scrap 58. Nevertheless, Scrap 58 agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:

- a. The Director or his designee terminates the Order after Scrap 58 has completed all of the requirements of the Order;
- b. Scrap 58 petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Scrap 58.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Scrap 58 from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Scrap 58 and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Scrap 58 certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Scrap 58 to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Scrap 58.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Scrap 58 voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2017.

Regional Director
Department of Environmental Quality

Scrap 58, Inc. voluntarily agrees to the issuance of this Order.

Date: _____ By: [Signature]
Scrap 58, Inc.

Commonwealth of Virginia

City/County of Virginia Beach

The foregoing document was signed and acknowledged before me this 17th day of May, 2017, by [Signature] who is Pres of Scrap 58, Inc., on behalf of the corporation.

[Signature]
Notary Public

Registration No.

My commission expires: July 31, 2017

Notary seal:



**APPENDIX A
SCHEDULE OF COMPLIANCE**

Scrap 58 shall:

1. By July 10, 2017, October 10, 2017, January 10, 2018, and April 2018 submit to DEQ Tidewater Regional Office, quarterly DMRs that include sampling results for the parameters listed in Part 1.A.1 of the Permit (benchmark monitoring) for the preceding quarter, results of routine Facility inspections and visual examinations of storm water quality conducted, to ensure compliance with the Facility SWP3 and the Permit during the preceding three-month period. Reports shall include any corrective action taken in response to deficiencies noted during any inspection or examination.
2. By June 15, 2017 and August 2017 submit to DEQ Tidewater Regional Office, additional DMRs that include sample results for the parameters listed in Part 1.B.7(b) of the Permit (TMDL monitoring).
3. Comply with all conditions of the Permit.
4. Mail all submittals and reports required by this Appendix A to:

Regional Director
DEQ, Tidewater Regional Office
5636 Southern Blvd.
Virginia Beach, VA 23462